

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 20/2318 SC/CRML

BETWEEN: Public Prosecutor

AND: Daniel George
Defendant

Coram: Justice Aru

Counsel: Ms. L. Lunabek for the Public Prosecutor
Mr. L. Moli for the Defendant

JUDGMENT
(Verdict)

Introduction

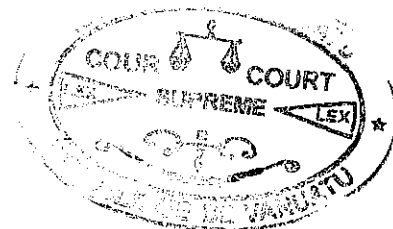
1. This case concerns alleged indecent acts on two little girls on the island of Makira, in 2019. I will refer to the two victim/complainants as GS and RT. The accused is alleged to have touched the two victims indecently when they were both under the age of 15 years.

The charge

2. The defendant is charged with 2 counts of indecency with a young person contrary to s 98A of the Penal Code [CAP 135]. He pleaded not guilty to both counts.

Elements of the charge

3. There are two elements of each charge. As to Count 1 the prosecution must prove that:-
 - a) Daniel George committed an act of indecency upon GS; and
 - b) GS was under the age of 15.
4. As to count 2 the prosecution must prove that:-
 - a) Daniel George committed an act of indecency upon RT; and
 - b) RT was under the age of 15.



5. The prosecution bears the burden of proof and it must prove all the elements of each offence beyond reasonable doubt.
6. The defendant is not required to prove his innocence. He was informed of his rights pursuant to s 81 and 88 of the Criminal Procedure Code [CAP 136]
7. Counsels agreed that the age of both victims is not a disputed fact requiring proof. Both victims/complainants are under 15 years. The only issue is whether Daniel George committed the indecent acts.
8. At the close of the prosecution case I ruled as required by s 164 of the CPC that a prima facie case existed and called the defendant to make his defence. The defendant exercised his rights and opted to remain silent and not to give evidence.

Evaluation of the evidence

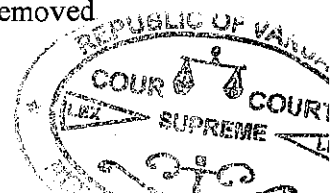
9. Five (5) witnesses were called by the prosecution. Mrs Beverly Song, the victim complainant RT, Mrs Maretha Simon, Mr Abet Simon and Mr Fannie Peter.

Count 2

10. Beverly Song's evidence is that in 2019 she saw RT coming out of the defendant's house. When she washed RT she cried. She said RT told her that the defendant touched her private part. She confirmed what RT said in her statement. She said the defendant lived alone with his son. She was cross examined. She agreed that the offending occurred in 2019 when RT could talk. She agreed she saw RT coming out of the defendant's house so she said the defendant touched her.
11. RT was called. She is 5 years old. The Court proceed informally and the Court was closed to the public. The accused sat behind a screen. RT was allowed to give evidence without taking the oath given her very young age. An interpreter was requested by the prosecution to assist the complainant. She was unable to complete her evidence other than giving her name, age, parents name, school and knowing the defendant. The prosecutor applied under s 162 (3) of the CPC to have her statement read as evidence that "*Daddy blo Troy I bin tachim tutu blo mi.*". She was not cross examined.

Count 1

12. Abet Simon said he saw GS coming out of the defendant's house and jumping up and down holding her private part. When he asked her she said her private part was sore. When his wife Maretha removed GS clothes he saw that her vagina was red. On 23 March 2020 they both asked GS what happened and she said the defendant removed

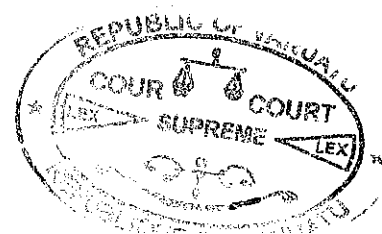


her panty and touched her vagina. Beverly Song told them the same symptoms were noticed on RT when the defendant touched her. Under cross examination he agreed that Beverly Song his sister told them that the defendant touched GS. He agreed that GS was present. He agreed that Beverly Song named the defendant so he said the defendant touched GS.

13. Maretha Simon did not see GS coming out of the defendant's house but on 29 November she checked GS private part and noticed that it was red. She washed her then applied some oil and took GS to the Aid Post. She said the health worker checked GS then gave her medicine. They returned home and she gave GS the medicine. At that time the defendant was living with his son Troy. She said GS told her the defendant touched her private part. She forgot why GS told her the defendant touched her private part. Under cross examination she agreed that the aid worker never examined GS.
14. Fanie Peter is the health worker. He said he never saw GS at the aid post. The prosecutor applied to have him declared as a hostile witness. The application was granted. Under cross examination by the prosecutor as a hostile witness, Fannie Peter confirmed making a report that he saw GS at the aid Post. When cross examined by defence counsel he said the report he made is not true as he never saw GS. He said he was asked to falsify the records of the aid post to lend credibility to the complaint. He never saw GS walking improperly.

Discussions

15. I am mindful of my responsibility to decide questions of fact and to decide what evidence to accept or reject or what weight to give to any part of the evidence. I have to come to a decision solely upon the evidence. I also note the cases referred to me by defence counsel namely *PP v Tugu* [2012] VUSC 128 *Koroka v PP* [2007] VUCA 3.
16. In relation to count 2, RT did not give evidence on oath as it was obvious to me that she was too young to understand the significance of the oath. The limited evidence she gave was given through the interpreter with some coaching in the Makira language to get her answers. Despite several attempts by the prosecutor the witness refused to continue to answer the question asked. The prosecutor applied to have her statement read as evidence.
17. RT was not cross examined on her statement given her inability to continue with her oral evidence. The Police officer who obtained her statement was not called and also not cross examined. Her evidence could not be given any weight as it was not tested in cross examination. I am mindful to warn myself if I have to accept her evidence as the sole evidence of the defendant's guilt without any corroboration. Section 83 (3) of the CPC requires that such evidence must be corroborated. The defendant cannot be convicted on such evidence alone.



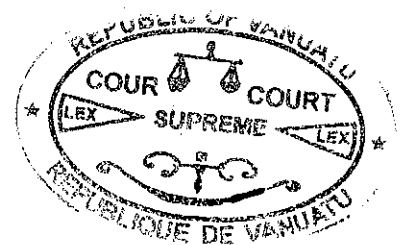
18. The only other witness who could have corroborated her evidence was her mother, Beverly Song. She took time to answer questions and often mumbled answers then changed her answers to questions when asked to answer. She did not appear to me to be a reliable witness. She looked for answers from members of the public in Court. Despite a number of warnings from the bench this continued and I had to exclude members of the public sitting in Court to complete her evidence.
19. In relation to count 1 GS did not make a statement .The prosecution admitted that they were relying on circumstantial evidence to prove that the defendant indecently touched GS.
20. Her parents are Abet and Maretha Simon .Both agreed under cross examination that because Beverly Song told them that the defendant touched GS that is why they say the defendant touched GS.
21. Abet agreed that he forced GS to admit that the defendant touched her.
22. Fannie Peter stood by his oath to tell the truth and told the Court that he was told to falsify the records of the aid post to say he saw GS at the aid post walking with difficulty. He never saw GS.

Findings

23. This case is about whether or not the defendant indecently touched RT and GS. At the relevant time the defendant was living with his son Troy. Beverly Song, Abet Simon Maretha Simon and Fannie Peter did not see the defendant touching the two victim/complainants.
24. Beverly Song only saw RT coming from the defendant's house. Similarly Abet Simon also saw GS coming from the defendant's house. GS did not give evidence. RT could not complete her evidence. The limited evidence she gave is tainted with some coaching by the interpreter therefore it is unreliable .Abet and Maretha Simon relied on what Beverly Song told them.
25. When considering the evidence in totality, I am not satisfied that the prosecution has proved beyond reasonable doubt that the defendant indecently touched the two complainants. He may have committed the acts but the prosecution has not proved its case to the requisite standard.

Verdict

26. I enter the following verdicts:-
 - Count 1 – not guilty
 - Count 2 – not guilty



27. Mr Daniel George is hereby acquitted on both charges.

DATED at Makira this 3rd day of June, 2021

BY THE COURT

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D. Aru
Judge

